

Department of Human Resource Management Rules

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R477-1. Definitions.

R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

- (1) **Abandonment of Position:** An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.
- (2) **Actual FTE:** The total number of full time equivalents based on actual hours paid in the state payroll system.
- (3) **Actual Hours Worked:** Time spent performing duties and responsibilities associated with the employee's job assignments.
- (4) **Actual Wage:** The employee's assigned salary rate in the central personnel record maintained by the Department of Human Resource Management.
- (5) **Administrative Leave:** Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.
- (6) **Administrative Adjustment:** A DHRM approved change of a position from one job to another job or salary range change for administrative purposes that is not based on a change of duties and responsibilities.
- (7) **Administrative Salary Decrease:** A decrease in the current actual wage of one or more salary steps based on non-disciplinary administrative reasons determined by an agency head or commissioner.
- (8) **Administrative Salary Increase:** An increase in the current actual wage of one or more salary steps based on special circumstances determined by an agency head or commissioner.
- (9) **Agency:** An entity of state government that is:
 - (a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code ;
 - (b) authorized to employ personnel; and
 - (c) subject to DHRM rules.
- (10) **Agency Head:** The executive director or commissioner of each agency or their designated appointee.

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- (11) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.
- (12) Appeal: A formal request to a higher level review for consideration of an unacceptable grievance decision.
- (13) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.
- (14) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.
- (15) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.
- (16) Career Mobility: A time limited assignment of an employee to a position of equal or higher salary range for purposes of professional growth or fulfillment of specific organizational needs.
- (17) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.
- (18) Career Service Exempt Employee: An employee appointed to work for an unspecified period of time or who serves at the pleasure of the appointing authority and may be separated from state employment at any time without just cause.
- (19) Career Service Exempt Position: A position in state service exempted by law from provisions of competitive career service as prescribed in Section 67-19-15 and in Subsection R477-2-1(1).
- (20) Career Service Status: Status granted to employees who successfully complete a probationary period for competitive career service positions.
- (21) Category of Work: A job series within an agency that is designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced after review by DHRM as follows:
 - (a) a unit smaller than the agency upon providing justification and rationale for approval, for example:
 - (i) unit number;
 - (ii) cost centers;

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- (iii) geographic locations;
 - (iv) agency programs.
- (b) positions identified by a set of essential functions, for example:
 - (i) position analysis data;
 - (ii) certificates;
 - (iii) licenses;
 - (iv) special qualifications;
 - (v) degrees that are required or directly related to the position.
- (22) **Certifying:** The act of verifying the qualifications and availability of individuals on the hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.
- (23) **Change of Workload:** A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.
- (24) **Classification Grievance:** The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.
- (25) **Classified Service:** Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.
- (26) **Classification Study:** A Classification review conducted by DHRM under the rules outlined in Section R477-3-4. A study may include single or multiple job or position reviews.
- (27) **Compensatory Time:** Time off that is provided to an employee in lieu of monetary overtime compensation.
- (28) **Contractor:** An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and shall not accrue benefits.
- (29) **Corrective Action:** A documented administrative action to address substandard performance of an employee as described in Section R477-10-2.

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- (30) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.
- (31) Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.
- (32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.
- (33) Department: The Department of Human Resource Management.
- (34) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.
- (35) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.
- (36) DHRM: The Department of Human Resource Management.
- (37) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.
- (38) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (1994); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (1993); including exclusions and modifications.
- (39) Disciplinary Action: Action taken by management under the rules outlined in Section R477-11.
- (40) Discrimination: Unlawful action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other non-merit factor, as specified by law.
- (41) Dismissal: A separation from state employment for cause.
- (42) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85 (1993), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.
- (43) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

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- (44) Employment Eligibility Certification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.
- (45) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.
- (46) Equal Employment Opportunity (EEO): Nondiscrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.
- (47) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.
- (48) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.
- (49) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.
- (50) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).
- (51) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.
- (52) FLSA Nonexempt: Employees who are not exempt from the Fair Labor Standards Act.
- (53) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.
- (54) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

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- (55) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.
- (56) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.
- (57) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's paycheck stub.
- (58) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.
- (59) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes.
- (60) HRE: Human Resource Enterprise; the state human resource management information system.
- (61) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.
- (62) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.
- (63) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.
- (64) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government employment or for those positions which they have successfully supervised and for which they satisfy job requirements.
- (65) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.
- (66) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range and test standards are applied to each position in the group.
- (67) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

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- (68) Job Identification Number: A unique number assigned to a job by DHRM.
- (69) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.
- (70) Job Requirements: Skill requirements defined at the job level.
- (71) Job Series: Two or more jobs in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.
- (72) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.
- (73) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.
- (74) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.
- (75) Market Comparability Adjustment: Legislatively approved change to a salary range for a job or to an employee's actual wage based on a compensation survey conducted by DHRM.
- (76) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.
- (77) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.
- (78) Nonfeasance: Failure to perform either an official duty or legal requirement.
- (79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.
- (80) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.
- (81) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.
- (82) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

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- (83) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.
- (84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.
- (85) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.
- (86) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.
- (87) Position Identification Number: A unique number assigned to a position for FTE management.
- (88) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.
- (89) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.
- (90) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty:
 - (a) where a fatality occurs;
 - (b) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident;
 - (c) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves one or more motor vehicles that incur disabling damage as a result of the accident that must be transported away from the scene by a tow truck or other vehicle;
 - (d) where there is reasonable suspicion that the employee had been driving while under the influence of a controlled substance.

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- (91) **Preemployment Drug Test:** A drug test conducted on final candidates for a safety sensitive position or on a current employee prior to assuming safety sensitive duties.
- (92) **Probationary Employee:** An employee hired into a career service position who has not completed the required probationary period for that position.
- (93) **Probationary Period:** A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.
- (94) **Productivity Step Adjustment:** A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from actual and budgeted FTE reductions.
- (95) **Promotion:** An action moving an employee from a position in one job to a position in another job having a higher maximum salary step.
- (96) **Protected Activity:** Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.
- (97) **Random Drug or Alcohol Test:** Unannounced drug or alcohol testing of a sample of safety sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each safety sensitive employee has an equal chance of being selected for testing.
- (98) **Reappointment:** Return to work of an individual from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in the employee's former position were cashed out upon separation.
- (99) **Reappointment Register:** A register of individuals who have:
 - (a) held career service positions and been separated in a reduction in force;
 - (b) held career service positions and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause;
 - (c) by Career Service Review Board decision been placed on the reappointment register.

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- (100) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulate observations concerning the appearance, behavior, speech or body odors of the employee.
- (101) Reassignment: A management initiated action moving an employee from his current job or position to a different job or position for administrative reasons not included in the definition of promotion or demotion.
- (102) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.
- (103) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.
- (104) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at separation.
- (105) Rehire: Return to work of a former career service employee who resigned from state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at separation.
- (106) Requisition: An electronic document used for Utah Job Match recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.
- (107) Retaliation: An adverse employment action taken against an employee who has engaged in a protected activity. The adverse action must have a causal link.
- (108) Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.
- (109) Return to Duty Drug or Alcohol Test: A drug or alcohol test conducted on an employee prior to allowing the employee to return to duty after successfully completing a drug or alcohol treatment program.
- (110) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.
- (111) RIF'd Individual: A former employee whose employment is terminated as a result of a reduction in force.

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- (112) **Safety Sensitive Position:** A position approved by DHRM that includes the performance of functions:
- (a) directly related to law enforcement; or
 - (b) involving direct access or having control over direct access to controlled substance; or
 - (c) directly impacting the safety or welfare of the general public; or
 - (d) which require an employee to carry or have access to firearms.
- (113) **Salary Range:** The segment of an approved pay plan assigned to a job.
- (114) **Schedule:** The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (Schedule B) or career service exempt (Schedule A).
- (115) **Serious Health Condition:** An illness, injury, impairment, physical or mental condition that involves:
- (a) inpatient care in a hospital, hospice, or residential medical care facility; or
 - (b) outpatient care with continuing treatment by a health care provider.
- (116) **Tangible Employment Action:** Any significant change in employment status e.g. hiring, firing, promotion, failure to promote, demotion, undesirable assignment, a decision causing a significant change in benefits, compensation decisions, and work assignment. Tangible employment action does not include insignificant changes in employment status such as a change in job title without a change in salary, benefits or duties.
- (117) **Temporary employee:** A career service exempt employee on schedule AI, AJ, or AL.
- (118) **Temporary Transitional Assignment:** An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.
- (119) **Transfer:** An employee initiated movement from one job or position to another job or position for which the employee qualifies for reasons not included in the definition of promotion.

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- (120) **Uniformed Services:** The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS), or any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; absence from work for an examination to determine fitness for any of the above types of duty.
- (121) **Unlawful Harassment:** Any behavior or conduct of an unlawful nature based on race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes that is unwelcome, pervasive, demeaning, derisive or coercive and results in a hostile, abusive or intimidating work environment or tangible employment action.
- (122) **USERRA:** Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.
- (123) **Veteran:** An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.
- (124) **Volunteer:** Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.
- (125) **Volunteer Experience Credit:** Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

KEY: personnel management, rules and procedures, definitions

Date of Enactment or Last Substantive Amendment: July 1, 2007

Notice of Continuation: June 11, 2002

Authorizing, and Implemented or Interpreted Law: Section 67-19-6

R477-2. Administration.

R477-2-1. Rules Applicability.

These rules apply to all career and career service exempt state employees except those specifically exempted in Section 67-19-12.

- (1) Certificated employees of the State Board of Education are covered by these rules except for rules governing classification and compensation, found in Rule R477-3 and R477-6.
- (2) Nonstate agencies with employees protected by the career service provisions of these rules in Rule R477-4, R477-5, R477-9 and R477-11 are exempted by contract from any provisions deemed inappropriate in their jurisdictions by the Executive Director, DHRM.
- (3) Unless employees in exempt positions have written contracts of employment for a definite period of time, they are career service exempt employees. The following employees are exempt from mandatory compliance with these rules:
 - (a) members of the Legislature and legislative employees;
 - (b) members of the judiciary and judicial employees;
 - (c) elected members of the executive branch and their direct staff who are career service-exempt employees;
 - (d) officers, faculty, and other employees of state institutions of higher education;
 - (e) any positions for which the salary is set by law;
 - (f) employees in the Attorney General's Office;
 - (g) agency heads and other persons appointed by the governor when authorized by statute;
 - (h) employees of the Governor's Office of Economic Development whose positions have been designated executive/professional by the executive director of the Governor's Office of Economic Development with the concurrence of the Executive Director, DHRM;
 - (i) employees of the Medical Education Council.
- (4) All other exempt positions are covered by provisions of these rules except rules governing career service status in Rule R477-4, R477-5, R477-9 and R477-11.

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- (5) The above positions may or may not be exempt from federal and other state regulations.

R477-2-2. Compliance Responsibility.

Agencies shall comply with these rules. Agencies are authorized to correct any administrative errors.

- (1) The Executive Director, DHRM, may authorize exceptions to provisions of these rules when one or more of the following criteria are satisfied:
 - (a) Applying the rule prevents the achievement of legitimate government objectives;
 - (b) Applying the rule impinges on the legal rights of an employee.
- (2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.
- (3) In cases of noncompliance with Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties prescribed by Subsection 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

R477-2-3. Fair Employment Practice.

All state personnel actions must provide equal employment opportunity for all individuals.

- (1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.
- (2) Employment actions shall not be based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, nor shall any person be subjected to unlawful harassment by a state employee.
- (3) An employee who alleges illegal discrimination may submit a claim to the agency head.
 - (a) The employee may file a charge with the Utah Anti-Discrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.
 - (b) No state official shall impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

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R477-2-4. Control of Personal Service Expenditures.

- (1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.
- (2) Agency management may request changes to the Position Management Report which are justified as cost reduction or improved service measures.
 - (a) Changes in the numbers, job identification, or salary ranges of positions listed in the Position Management Report shall be approved by the Executive Director, DHRM or designee.
- (3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Position Management Report.

R477-2-5. Records.

- (1) DHRM shall maintain a computerized file for each employee that contains the following, as appropriate:
 - (a) performance ratings;
 - (b) records of actions affecting employee salary, current classification, title and salary range, salary history, and other personal data, status or standing.
- (2) Agencies shall maintain the following records in each employee's personnel file:
 - (a) applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by the United States Bureau of Citizenship and Immigration Services Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, new employee orientation form, performance evaluation records, separation and leave without pay records, including employee benefits notification forms for PEHP and URS;
 - (b) references to or copies of transcripts of academic, professional, or training certification or preparation;
 - (c) copies of items recorded in the DHRM computerized file and other materials required by agency management to be placed in the personnel file. The agency personnel file shall be considered a supplement to the DHRM computerized file and shall be subject to the rules governing personnel files;

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- (d) leave and time records; and
 - (e) copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.
- (3) Agencies shall maintain a separate file from the personnel file containing confidential employee medical information.
 - (a) Information in this file shall include all written and orally obtained information pertaining to medical issues, including Family Medical and Leave Act forms, medical and dental enrollment forms which contain health related information, health statements, applications for additional life insurance, and any other medical information.
 - (b) Information regarding the results from fitness for duty evaluations and drug testing shall be maintained in a file separate from the personnel file and from the file containing confidential employee medical information.
 - (c) Information in this file is considered private or controlled information. Communication shall adhere to Title 63, Chapter 2, the Government Records Access and Management Act.
 - (d) An employee who violates confidentiality is subject to state disciplinary procedures.
- (4) An employee has the right to review the employee's personnel file, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.
 - (a) An employee may correct, amend, or challenge any information in the DHRM computerized or agency personnel file, through the following process:
 - (i) The employee shall request in writing that changes occur.
 - (ii) The employing agency shall be given an opportunity to respond.
 - (iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

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- (5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.
 - (a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed section and the authority for the action.
- (6) Upon employee separation, DHRM and agencies shall retain computerized records for thirty years. Agency hard copy records shall be retained by the agency for a minimum of two years, then transferred to the State Record Center to be retained according to the record retention schedule.
- (7) Information classified as private in both DHRM and agency personnel and payroll files shall be available only to the following people:
 - (a) the employee;
 - (b) users authorized by the Executive Director, DHRM, who have a legitimate need to know;
 - (c) individuals who have the employee's written consent.
- (8) Utah is an open records state, according to Title 63, Chapter 2, the Government Records Access and Management Act. Information classified as public concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be released upon request.
- (9) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel and medical file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.
- (10) An employee may request a copy of any documentary evidence used for disciplinary purposes in any formal hearing, regardless of the document's source, prior to such use. This shall not apply to documentary evidence used for rebuttal.
- (11) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to Title 63, Chapter 2, the Government Records Access and Management Act. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.

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- (12) In compliance with the Government Records Access and Management Act, only information classified as public or private which can be determined to be related to and necessary for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know basis. The authorized manager in DHRM shall make the determination.
- (13) An employee may verbally request the release of information for personal use, or authorize in writing the release of personal performance records for use by an outside agent based on a need to know authorization. Private data shall only be released, except to the employee, after a written request has been evaluated and approved.

R477-2-6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a reference release form for information authorized under Title 63, Chapter 2, of the Government Records Access and Management Act.

- (1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.
- (2) Additional information may be provided if authorized by law.

R477-2-7. Employment Eligibility Certification (Immigration Reform and Control Act - 1986).

All career and career service exempt employees appointed on and after November 7, 1986, as a new hire, rehire, agency transfer or through reciprocity with or assimilation from another career service jurisdiction must provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Certification Form I-9 as required under the Immigration Reform and Control Act of 1986.

R477-2-8. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed in the Section 52-3-1.

- (1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

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R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to his employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

- (1) In most cases, under provisions of Sections 63-30-36, and 63-30-37, the Governmental Immunity Act (GIA), an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.
- (2) If a law suit results against an employee, the GIA stipulates that the employee must request a defense from his agency head in writing within ten calendar days.

R477-2-10. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program in accordance with Chapter 63-46C, Utah Code Annotated.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information

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Notice of Continuation: June 11, 2002

Authorizing, and Implemented or Interpreted Law: 52-3-1; 63-2-204(5); 63-2-903(4); 67-19-6; 67-19-18

R477-3. Classification.

R477-3-1. Job Classification Methods.

The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions not exempted by law from the classification plan. The Executive Director, DHRM, may authorize exceptions to provisions of the following rule, consistent with Subsection R477-2-2(1).

R477-3-2. Job Description.

DHRM shall maintain job descriptions, as appropriate, for all jobs in the classified plan.

- (1) Job descriptions shall contain:
 - (a) job title;
 - (b) distinguishing characteristics;
 - (c) a description of tasks commonly associated with most positions in the job;
 - (d) statements of required knowledge, skills, and other requirements;
 - (e) FLSA status and other administrative information as approved by DHRM.

R477-3-3. Assignment of Duties.

Management may assign, modify, or remove any employee task or responsibility in order to accomplish reorganization, improve business practices or process, or for any other reason deemed appropriate by the department administration.

R477-3-4. Position Classification Review.

- (1) A formal classification review may be conducted under the following circumstances:
 - (a) as part of a scheduled study;
 - (b) at the request of an agency, with the approval of the Executive Director, DHRM; or
 - (c) as part of a classification grievance review.
- (2) DHRM shall determine if there are significant changes in the duties of a position to warrant a review.

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- (3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.
- (4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

R477-3-5. Position Classification Grievances.

- (1) An agency or a career service employee may grieve formal classification decisions regarding the classification of a position.
 - (a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.
 - (b) An employee may only grieve a formal classification decision regarding the employee's own position.

KEY: administrative procedures, grievances, job descriptions, position classifications

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Notice of Continuation: June 11, 2002

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12

R477-4. Filling Positions.

R477-4-1. Authorization to Fill a Position.

Agencies shall have sufficient funds to fill positions that are listed in the Position Management Report. The Executive Director, DHRM, may authorize exceptions to provisions of this rule, consistent with Subsection R477-2-2(1).

The DHRM approved recruitment and selection system is the state's recruitment and selection system for career service positions. Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by the Department of Human Resource Management.

R477-4-2. Selection for Career Service Exempt Positions.

- (1) Agencies and managers may use any process to select an employee for a career service exempt position which complies with state and federal laws and regulations.

R477-4-3. Career Service Positions.

- (1) Selection of a career service employee shall be governed by the following:
 - (a) DHRM standards and procedures;
 - (b) career service principles;
 - (c) equal employment opportunity principles;
 - (d) Section 52-3-1, employment of relatives;
 - (e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.
- (2) DHRM shall take affirmative action to ensure that members of legally protected classes have the opportunity to apply and be considered for available positions in state government.

R477-4-4. Order of Selection for Career Service Positions.

- (1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:
 - (a) reemployment of a veteran eligible under USERRA;
 - (b) reassignment or transfer within an agency for the purposes of reasonable accommodation under the Americans with Disabilities Act;

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- (c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
 - (d) reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;
 - (e) reassignments, management initiated career mobility, or other movement of qualified career service employees at the same or lesser salary range to better utilize skills or assist management in meeting the organization's mission;
 - (f) reclassification.
- (2) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointing authorities may make appointments according to the following order of selection which applies to all vacant career service positions:
- (a) First, agencies shall make appointments from the statewide reappointment register in compliance with Subsection R477-12-3(7) with the names of individuals who meet the position qualifications.
 - (b) Second, agencies may make appointments within an agency through promotion or through transfer of a qualified career service employee, career mobility assignments to a higher salary range, or conversions from schedule A to schedule B as authorized by Subsection R477-5-1(3).
 - (c) Third, agencies may make appointments from a list of qualified applicants certified as eligible for appointment to the position, or from another competitive process pre-approved by the Executive Director, DHRM.

R477-4-5. Recruitment for Career Service Positions.

- (1) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.
 - (a) In addition to the DHRM required recruitment announcement, all other recruitment announcements shall include the following:
 - (i) position information about available vacancies;
 - (ii) information about the DHRM approved recruitment and selection system;

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- (iii) documented communication regarding examination methods and opening and closing dates, if applicable;
 - (iv) a strategy for equal employment opportunity, if applicable.
- (2) Job information for career service positions shall be announced publicly for a minimum of five working days.
- (3) Agencies are required to provide employees with information about the DHRM approved recruitment and selection system.
- (4) Recruitment is not required for personnel actions outlined in Subsection R477-4-4(1).
- (5) Appointment of an employee from the statewide reappointment register must comply with the order of selection specified in Section R477-4-4.

R477-4-6. Transfer and Reassignment.

- (1) Positions may be filled by reassigning an employee without a reduction in the current actual wage except as provided in Subsection R477-6-4(5).
- (2) The agency that receives a transfer or reassignment of an employee shall verify his career status and that the employee meets the job requirements for the position.
 - (a) An employee with a disability who is otherwise qualified may be eligible for transfer or reassignment to a vacant position within the agency as a reasonable accommodation measure.
- (3) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.
- (4) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.
- (5) A reassignment or transfer may be to one or more of the following:
 - (a) a different job or position;
 - (b) a different work location;
 - (c) a different organizational unit; or
 - (d) a different agency.

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R477-4-7. Rehire.

- (1) A former career service employee may be eligible for rehire to any career service position for which he is qualified.
 - (a) A rehired employee must compete through the DHRM approved recruitment and selection system and must serve a new probationary period, as designated in the official job description.
 - (i) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave.
 - (ii) An employee who is rehired within 12 months of separation to a position which receives sick leave benefits shall have his previously accrued sick leave credit reinstated as program II sick leave.
 - (b) A rehired employee may be offered any salary within the salary range for the position.
- (2) Career Service exempt employees cannot be rehired to career service positions, except as prescribed by Section 67-19-17.

R477-4-8. Examinations.

- (1) Examinations shall be designed to measure and predict success of individuals on the job. Appointment to career service positions shall be made through open, competitive selection.
- (2) The Executive Director, DHRM, shall establish the standards for the development, approval and implementation of examinations. Examinations shall include the following:
 - (a) a documented job analysis;
 - (b) an initial, unbiased screening of the individual's qualifications;
 - (c) security of examinations and ratings;
 - (d) timely notification of individuals seeking positions;
 - (e) elimination from further consideration of individuals who abuse the process;
 - (f) unbiased evaluation and results;
 - (g) reasonable accommodation for qualified individuals with disabilities.

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- (3) When examinations utilizing ratings of training and experience are administered, agencies may establish maximum years of credit for training and experience for the purpose of rating qualified applicants. Separate maximums may be set for years of training and years of experience.

R477-4-9. Hiring Lists.

- (1) The hiring list shall include the names of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.
 - (a) Hiring lists shall be constructed using the DHRM approved recruitment and selection system. All competitive processes shall be based on job related criteria.
 - (b) All applicants included on a hiring list shall be examined with the same examination or examinations.
 - (c) An individual shall be considered an applicant when he is determined to be both qualified for and interested in a particular position identified through a specific requisition.
- (2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.
- (3) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.
- (4) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.
- (5) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.
- (6) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-10. Time Limited Exempt Positions.

The Executive Director, DHRM, may approve the creation and filling of career service exempt positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be career service exempt as defined in Section 67-19-15.

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- (1) Time limited, temporary or seasonal career service exempt appointments, such as schedules AJ and AL, may be made without competitive examination, provided job requirements are met.
 - (a) The following appointments are temporary, and may not receive benefits:
 - (i) AJ appointments shall last no longer than 1560 working hours in any consecutive 12 month period.
 - (b) Appointments under schedules AE, AI and AL shall be career service exempt positions. AE, AI and AL employees may receive benefits on a negotiable basis.
 - (i) Schedule AL appointments shall work on time limited projects for a maximum of two years or on projects with time limited funding.
 - (ii) Only schedule A appointments made from a hiring list as prescribed by Subsection R477-4-9 may be considered for conversion to career service.
 - (2) Appointments to fill an employee's position who is on approved leave without pay shall only be made temporarily.
 - (3) A time limited agreement shall be signed by the parties.

R477-4-11. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for career part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-12. Internships and Cooperative Education.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary, career service exempt positions.

R477-4-13. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, he shall not be required to compete for his current position. However, a reduction in the number of positions in a certain class shall be treated as a reduction in force.

R477-4-14. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

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- (1) Agencies may provide career mobility assignments inside or outside state government to qualified employees. Career mobility programs are designed to develop agency resources and to enhance the employee's career growth.
 - (a) Agencies shall establish procedures governing career mobility programs.
- (2) Agencies shall develop and use written career mobility contract agreements between employees and supervisors to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.
 - (a) Programs shall conform to equal employment opportunities and practices.
 - (b) An eligible employee, the agency or supervisor may initiate career mobility.
 - (c) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.
 - (d) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.
- (3) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.
 - (a) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-15. Assimilation.

- (1) An employee assimilated by the state from another career service system shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.
 - (a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-4 Filling Positions

KEY: employment, fair employment practices, hiring practices

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Authorizing, and Implemented or Interpreted Law: 67-19-6

R477-5. Employee Status and Probation.

R477-5-1. Career Service Status.

- (1) Only an employee who is appointed through a pre-approved competitive process shall be eligible for appointment to a career service position.
- (2) An employee shall complete a probationary period in a competitive career service position prior to receiving career service status.
- (3) An exempt employee may only convert to career service status under the following conditions:
 - (a) The employee previously held career service status with no break in service between exempt status and the previous career service position.
 - (b) The employee was hired from a hiring list as prescribed by Subsection R477-4-9, and completed a probationary period.

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

- (1) An employee shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.
 - (a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).
 - (b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.
- (2) Each career position shall be assigned a probationary period consistent with its job.
 - (a) The probationary period may not be extended except for periods of leave without pay, workers compensation leave, temporary transitional assignment, military leave under USERRA, or donated leave from an approved leave bank.
 - (b) The probationary period may not be reduced after appointment.

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- (c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period unless there is a break in service.
- (3) An employee in a career service position who works at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.
- (4) An employee serving probation in a competitive career service position may be transferred, reassigned or promoted to another competitive career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. If an agency determines that a new probationary period is needed, it shall be the full probationary period defined in the job description.

R477-5-3. Temporary Transitional Position.

- (1) An employee on probation who is temporarily disabled may be placed in another position with lighter duty or reduced responsibility and salary.
 - (a) This accommodation shall occur for no longer than one year from the date of disability.
 - (b) Time spent in a transitional position does not reduce the required probationary period in the primary position.

R477-5-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with Subsection R477-2-2(1).

KEY: employment, personnel management, state employees

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Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-16(5)(b)

R477-6. Compensation.

R477-6-1. Pay Plans.

- (1) DHRM shall develop or modify pay plans for compensating employees.
- (2) Market comparability salary range adjustments shall be legislatively approved.

R477-6-2. Allocation to the Pay Plans.

- (1) Each job shall be assigned to a salary range on the applicable pay plan, except where compensation is established by statute.
- (2) Salary range determination for benchmark jobs shall be based on salary survey data. The salary ranges for other jobs are determined by relative ranking with the appropriate benchmark job.

R477-6-3. Appointments.

- (1) All appointments shall be placed on the DHRM approved salary range for the job. Hiring officials shall receive approval from their agency head and DHRM before making appointment offers to individuals.
- (2) Reemployed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, any cost of living allowances, reclassification of the veteran's preservice position, or market comparability adjustments that would have affected the veteran's preservice position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-6-4. Salary.

- (1) Merit increases. The following are applicable if merit increases are authorized and funded by the legislature:
 - (a) Employees who are not on a longevity step and who are not at the maximum step of their salary range, who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a merit increase of one or more salary steps at the beginning of the new fiscal year.
 - (b) Employees designated as schedule AE, AI and AL who are receiving benefits are eligible for merit step increases.
 - (c) Employees designated as schedule AJ are not eligible for merit step increases.

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(2) Promotions and Reclassifications.

- (a) An employee promoted or reclassified to a job with a salary range exceeding the employee's current salary range maximum by one salary step shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. An employee who is promoted or reclassified to a job with a salary range exceeding the employee's current salary range maximum by two or more salary steps shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps.
 - (i) An employee may not be placed higher than the maximum salary step or lower than the minimum salary step in the new salary range. Placement of an employee in longevity shall be consistent with subsection R477-6-4(3).
 - (ii) An employee who remains in longevity status after a promotion or reclassification shall retain the same salary by being placed on the corresponding longevity step.
- (b) To be eligible for a promotion, an employee shall:
 - (i) meet the job requirements and skills specified in the job description and position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position.
- (c) An employee whose position is reclassified or changed by administrative adjustment to a job with a lower salary range shall retain the current salary. The employee shall be placed on the corresponding longevity step if the salary exceeds the maximum of the new salary range.

(3) Longevity.

- (a) An employee shall receive a longevity increase of 2.75 percent when:
 - (i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and
 - (ii) the employee has been at the maximum salary step in the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.
- (b) An employee on a longevity step shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

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- (c) An employee on a longevity step shall only be eligible for additional step increases every three years. To be eligible, an employee must receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.
 - (d) An employee on a longevity step who is reclassified to a lower salary range shall retain the current actual wage.
 - (e) An employee on a longevity step who is promoted or reclassified to a higher salary range shall only receive an increase if the current actual wage is less than the highest salary step of the new range.
 - (f) Agency heads or time limited exempt employees identified in Section R477-4-10 are not eligible for the longevity program.
- (4) Administrative Adjustment.
 - (a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, shall not receive an adjustment in the current actual wage.
 - (b) Implementation of new job descriptions as an administrative adjustment shall not result in an increase in the current actual wage unless the employee is below the minimum step of the new range.
- (5) Reassignment.

An employee's current actual wage may only be lowered when permitted by federal or state law, including but not limited to the Americans with Disabilities Act.
- (6) Transfer.

Management may increase or decrease the current actual wage of an employee who initiates a transfer to another position consistent with Section R477-6-4.
- (7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of one or more salary steps as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the reduction in the current actual wage.
- (8) Productivity step adjustment.

Agency management may establish policies to reward an employee who assumes additional workloads which result from the elimination of a position for

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at least one year with an increase of up to four salary steps. An employee at the maximum step of the salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

- (a) To implement this program, agencies shall apply the following criteria:
 - (i) either the employee or management can make the suggestion;
 - (ii) the employee and management agree;
 - (iii) the agency head approves;
 - (iv) a written program policy achieves increased productivity through labor and management collaboration;
 - (v) DHRM approves;
 - (vi) the position will be abolished from the position authorization plan for a minimum of one year;
 - (vii) staff receive additional duties which are substantially above a normal full workload;
 - (viii) the same or higher level of service or productivity is achieved without accruing additional overtime hours;
 - (ix) the total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50 percent of the savings generated by eliminating the position.

(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

- (a) An employee shall receive one or more steps up to the maximum of the salary range.
- (b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.
- (c) Justifications for Administrative Salary Increases shall be:
 - (i) in writing;
 - (ii) approved by the agency head;

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- (iii) supported by issues such as: special agency conditions or problems or other unique situations or considerations in the agency.
 - (d) The agency head is the final authority for salary actions authorized within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.
 - (e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.
 - (f) An employee at the maximum step of the range or on a longevity step may not be granted administrative salary increases.
- (10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

- (a) An employee shall receive a one or more step decrease not to exceed the minimum of the salary range.
- (b) Justification for administrative salary decreases shall be:
 - (i) in writing;
 - (ii) approved by the agency head; and
 - (iii) supported by issues such as previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems, or other unique situations or considerations in the agency.
- (c) The agency head is the final authority for salary actions within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-6-5. Incentive Awards.

- (1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

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- (a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.
 - (b) Individual awards shall not exceed \$4,000 per occurrence and \$8,000 in a fiscal year. In exceptional circumstances, an award may exceed these limits upon application to DHRM and approval by the Governor.
 - (c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.
- (2) Performance Based Incentive Awards.
- (a) Cash Incentive Awards
 - (i) An agency may grant a cash incentive award to an employee or group of employees who:
 - (A) demonstrate exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.
 - (ii) All cash awards must be approved by the agency head or designee. They must be documented and a copy shall be maintained in the agency's individual employee file.
 - (b) Noncash Incentive Awards
 - (i) An agency may recognize an employee or group of employees with noncash incentive awards.
 - (ii) Individual noncash incentive awards shall not exceed a value of \$50 per occurrence and \$200 for each fiscal year.
 - (iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and must follow standards and procedures established by the Department of Administrative Services, Division of Finance.
- (3) Cost Savings Bonus
- (a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.
 - (i) The agency shall document the cost savings involved.

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(4) Market Based Bonuses

An agency may award a cash bonus to an employee as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(b) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to convince the candidate to work for the state.

(c) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(d) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(e) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected and is successfully employed for at least six months.

R477-6-6. Employee Benefits.

- (1) Agencies shall explain all benefits provided by the state to new hires or rehires within five working days of the hire date.
- (2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date.
- (3) An employee must elect to enroll in the life, health, vision, and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. An employee who does not enroll within 60 days can only enroll during the annual open enrollment period for all state employees. Agencies shall submit the enrollment forms to Group Insurance within three days of the date entered on the enrollment form.

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(4) Flex Benefits

- (a) A benefits eligible employee may participate in the FLEX benefits program. The annual open enrollment period will be held each November for the following FLEX plan year.

Exceptions to this rule are as follows:

- (i) A new employee wishing to participate in the FLEX benefits program shall enroll within the first 60 days of employment. Coverage becomes effective on the employment date.
 - (ii) An employee who has a change in family status such as marriage, divorce, or birth of a child, may enroll or make changes within 60 days of such event. A completed FLEX family status change form, accompanied by proper documentation such as a marriage license, divorce decree, or birth certificate, must be received by the plan administrator within 60 days of the change in family status.
 - (b) An employee must reenroll each year to participate in the FLEX benefits program.
 - (c) An employee's designated FLEX payroll deduction shall not be changed during the course of a year unless there is a change in family status.
 - (d) To be eligible for reimbursement, expenses must be incurred during the plan year.
 - (e) The claim submission deadline for any plan year shall be 90 days following the end of the calendar year.
 - (f) An employee terminating, retiring, or changing from eligible to ineligible status during the plan year may either submit claims incurred during employment no later than 90 days following the date of termination, retirement or status change, or elect COBRA for the health care account only.
- (5) An employee in a position which normally requires working less than 40 hours per pay period is ineligible for benefits. An employee in a position which normally requires working 40 hours or more per pay period shall be eligible for all benefits, unless the employee is in a position specifically designated as ineligible for benefits. Leave benefits shall be determined on a prorated basis according to actual hours paid in a pay period.
 - (6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

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R477-6-7. Employee Converting from Career Service to Schedule AD, AR, or AS.

- (1) A career service employee in a position meeting the criteria for career service exempt Schedule AD, AR, AS or AT shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:
 - (a) a base salary increase of one to three salary steps, as determined by the agency head. An employee at the maximum of the current salary range or on longevity shall receive, in lieu of the salary step adjustment, a one time bonus of 2.75 percent, 5.5 percent or 8.25 percent to be determined by the agency head;
 - (b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:
 - (i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;
 - (ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;
 - (iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.
- (2) An employee electing to convert to career service exempt after the 60 day election period shall not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.
- (3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as Schedule AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.
- (4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, the employee shall not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.
- (5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

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- (6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-8. State Paid Life Insurance.

- (1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:
 - (a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:
 - (i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;
 - (ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;
 - (iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.
- (2) An employee on schedule AC, AK, AM and AS may be provided these benefits at the discretion of the appointing authority.

R477-6-9. Severance Benefit.

- (1) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, shall receive at the time of severance a benefit equal to:
 - (a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and
 - (b) if eligible for COBRA, one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.
- (2) A severance benefit shall not be paid to an employee:
 - (a) whose statutory term has expired without reappointment;
 - (b) who is retiring from state service; or
 - (c) who is discharged for cause.

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- (3) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between the current actual wage and the new actual wage multiplied by the number of accrued annual leave, converted sick leave, and excess hours on the date of reassignment.
- (4) An employee on schedule AC, AK, AM or AS may be provided these same severance benefits at the discretion of the appointing authority.

R477-6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions actions and documents.

KEY: salaries, employee benefit plans, insurance, personnel management

Date of Enactment or Last Substantive Amendment: July 1, 2007

Notice of Continuation: June 11, 2002

Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

R477-7. Leave.

R477-7-1. Conditions of Leave.

- (1) An employee who normally works 40 hours or more per pay period, except those identified as career service exempt in Section R477-4-10, is eligible for leave benefits. An employee receives leave benefits in proportion to the time paid.
 - (a) An eligible employee who normally works 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time paid.
 - (b) An employee shall use leave in no less than quarter hour increments.
- (2) A seasonal, temporary, or part-time employee working less than 40 hours per pay period is not eligible for paid leave.
- (3) Accrual rates for sick, holiday and annual leave are determined on the Annual, Sick and Holiday Leave Accrual table available through DHRM.
- (4) An employee may not use annual, sick, converted sick, compensatory, excess or holiday leave before accrued.
- (5) An employee may not use compensatory, annual, converted sick leave used as annual, or excess leave without advance approval by management.
- (6) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.
- (7) An employee on paid leave shall continue to accrue annual, holiday and sick leave.
- (8) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.
 - (a)
 - (i) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.
 - (ii) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.
 - (b) An employee may transfer this payout, minus all nondeferred taxes, to a 401(k) or 457 account up to the amount allowed by IRS regulation.
 - (c) No leave on leave may accrue or be paid on the cashed out leave.

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- (d) Leave cannot be used or accrued after the last day worked, except for FMLA or other medical reasons, or administrative leave specifically approved by management to be used after the last day worked.
- (9) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

- (1) The following dates are designated legal holidays:
 - (a) New Years Day -- January 1
 - (b) Dr. Martin Luther King Jr. Day -- third Monday of January
 - (c) Washington and Lincoln Day -- third Monday of February
 - (d) Memorial Day -- last Monday of May
 - (e) Independence Day -- July 4
 - (f) Pioneer Day -- July 24
 - (g) Labor Day -- first Monday of September
 - (h) Columbus Day -- second Monday of October
 - (i) Veterans' Day -- November 11
 - (j) Day -- fourth Thursday of November
 - (k) Christmas Day -- December 25
 - (l) Any other day designated as a legal holiday by the Governor.
- (2) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.
- (3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.
- (4) The following employees are eligible to receive holiday leave:
 - (a) A full-time employee shall accrue eight hours of paid holiday leave on holidays.

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- (b) A part-time career service employee and a partner in a shared position who works 40 hours or more per pay period shall receive holiday leave in proportion to the hours paid in the pay period in which the holiday falls.
 - (c) An employee working flex time, as defined in Section R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off, a flex time employee shall receive an equivalent workday off, not to exceed eight hours, or shall accrue excess hours.
- (5) An employee receives holiday leave in proportion to the number of hours paid during the pay period in which the holiday falls.
- (a) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.
 - (b) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.
 - (c) An employee in a leave without pay status shall receive holiday leave in proportion to the time paid in the pay period in which the holiday falls.

R477-7-3. Annual Leave.

- (1) An employee eligible for annual leave shall accrue leave based on the following years of state service:
 - (a) less than 5 years -- four hours per pay period;
 - (b) at least 5 and less than 10 years -- five hours per pay period;
 - (c) at least 10 and less than 20 years -- six hours per pay period;
 - (d) 20 years or more -- seven hours per pay period.
- (2) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave.
- (3) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.
- (4) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.
- (5) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

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- (6) The maximum annual leave accrual rate shall be granted to a certain employee under the following conditions:
 - (a) an employee described in Section 67-22-2, an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.
 - (b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.
 - (c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.
 - (d) The employee may not be eligible for any transfer of leave from other jurisdictions.
 - (e) Other provisions of leave shall apply as defined in Section R477-7-1.

R477-7-4. Sick Leave.

- (1) An employee shall accrue sick leave with pay in proportion to the time paid each pay period, not to exceed four hours. Sick leave shall accrue without limit.
- (2) Sick leave shall be granted for:
 - (a) preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or temporary disability of the employee, a spouse, children or parents living in the employee's home; or
 - (b) FMLA purposes under Section R477-7-15.
- (3) Agency management may grant exceptions for other unique medical situations.
- (4) An employee shall arrange for a telephone report to supervisors at the beginning of the scheduled workday the employee is absent due to illness or injury. Management may require reports for serious illnesses or injuries.
- (5) Any application for a grant of sick leave to cover an absence that exceeds four successive working days shall be supported by administratively acceptable evidence. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

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- (6) After filing a resignation notice, an employee must support a sick leave request with a doctor's certificate.
- (7) An employee separating from state service may not receive compensation for accrued unused sick leave unless retiring.
 - (a) An employee who is rehired within 12 months of separation to a position that receives sick leave benefits shall have previously accrued unused sick leave credit reinstated.
 - (b) An employee who retires from state service and is rehired may not reinstate unused sick leave credit.

R477-7-5. Converted Sick Leave.

An employee may convert sick leave hours to converted sick leave after the end of the last pay period of the calendar year in which the employee is eligible.

- (1)
 - (a) Converted sick leave hours accrued prior to January 1, 2006 shall be program I converted sick leave hours.
 - (b) Converted sick leave hours accrued after January 1, 2006 shall be program II converted sick leave hours.
- (2) To be eligible, an employee must have accrued a total of 144 hours or more of sick leave in program I and program II combined at the beginning of the first pay period of the calendar year.
 - (a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to program II converted sick leave.
 - (b) The maximum hours of converted sick leave an employee may accrue in program I and program II combined is 320.
 - (c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.
 - (d) In order to prevent or reverse the conversion, an employee shall:
 - (i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or
 - (ii) notify agency management no later than the end of February in order to reverse the conversion.

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- (e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar leave year in excess of 64 to converted sick leave hours in program II.
- (3) An employee may use converted sick leave as annual leave or as regular sick leave.
- (4) Upon retirement, 25 percent of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401
- (5) account as an employer contribution.
 - (a) Converted sick leave hours from program II shall be placed in the 401 (k) accounts before hours from program I.
 - (b) The remainder shall be used for:
 - (i) the purchase of health care insurance and life insurance as provided in Subsection R477-7-6(3)(c) if the converted sick leave was accrued in program I ; or
 - (ii) a contribution into the employees PEHP health reimbursement account as provided in Subsection R477-7-6(4)(b) if the converted sick leave was accrued in program II.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under the provisions of Section 67-19-14.2 and Section 67-19-14.4.

- (1)
 - (a) Sick leave hours accrued prior to January 1, 2006 shall be program I sick leave hours.
 - (b) Sick leave hours accrued after January 1, 2006 shall be program II sick leave hours.
- (2) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.
 - (a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.
- (3) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

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- (a) Continuing health and life insurance.
 - (i) The employing agency shall provide the same health and life insurance benefits as provided to current employees until the employee reaches the age eligible for Medicare or up to the following number of years, whichever comes first.
 - (A) four years if the employee retires during calendar year 2007:
 - (B) three years if the employee retires during calendar year 2008:
 - (C) two years if the employee retires during calendar year 2009:
 - (D) one year if the employee retires during calendar year 2010;
or
 - (E) zero years if the employee retires after calendar year 2010.
 - (ii) Health insurance provided shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.
 - (iii) Life insurance provided shall be the minimum authorized coverage provided for all state employees at the time the employee retires.
 - (iv) The retiree shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.
- (b) Twenty five percent of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.
 - (i) Sick leave hours from program II shall be placed in the 401(k) account before hours from program I.
 - (ii) After the 401(k) contribution is made, an additional amount shall be deducted from the employees remaining sick leave balance as follows.
 - (A) 384 hours if the employee retires during calendar year 2007;
 - (B) 288 hours if the employee retires during calendar year 2008;

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- (C) 192 hours if the employee retires during calendar year 2009;
 - (D) 96 hours if the employee retires during calendar year 2010;
or
 - (E) zero hours if the employee retires after calendar year 2010.
- (c) The remaining sick leave hours and converted sick leave hours from Subsection R477-7-5(4)(b)(i) shall be used to provide the following benefit.
- (i) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until he reaches the age eligible for Medicare.
 - (A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.
 - (B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.
 - (C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.
 - (D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.
 - (ii) When the employee reaches the age eligible for Medicare, he may purchase a Medicare supplement policy provided by PEHP for himself at the rate of eight hours of sick leave or converted sick leave for one month's premium.
 - (iii) After the employee reaches the age eligible for Medicare, he may purchase PEHP health insurance, or a state approved program for a spouse until the spouse reaches the age eligible for Medicare.
 - (A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.
 - (B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

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- (iv) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.
 - (v) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance as provided in Section 67-19-14.3.
- (4) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.
 - (a) Twenty five percent of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.
 - (b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(4)(b)(ii) shall be deposited in the employees PEHP health reimbursement account at the greater of:
 - (i) the employees rate of pay at retirement, or
 - (ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

R477-7-7. Administrative Leave.

- (1) Administrative leave may be granted consistent with agency policy for the following reasons:
 - (a) administrative;
 - (i) governor approved holiday leave;
 - (ii) during management decisions that benefit the organization;
 - (iii) when no work is available due to unavoidable conditions or influences; or
 - (iv) other reasons consistent with agency policy.
 - (b) protected;
 - (i) suspension with pay pending hearing results;
 - (ii) personal decision making prior to discipline;

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- (iii) removal from adverse or hostile work environment situations;
 - (iv) fitness for duty or employee assistance; or
 - (v) other reasons consistent with agency policy.
 - (c) reward in lieu of cash;
 - (i) the agency head or designee may grant paid administrative leave up to eight hours per occurrence;
 - (ii) administrative leave in excess of eight hours may be granted with written approval by the agency head.
 - (iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.
 - (iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.
 - (d) student educational assistance.
 - (e) An employee who satisfies the criteria in this subsection shall be granted up to two hours of administrative leave to vote in an official election.
 - (i) The employee must:
 - (A) have fewer than three total hours off the job between the time the polls open and close, and;
 - (B) apply for the time in the previous 24 hours.
 - (ii) Management may specify the hours when the employee may be absent.
 - (f) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.
- (2) With the exception of administrative leave used as a reward, as described in Subsection R477-7(1)(c), the agency head or designee may grant paid administrative leave up to ten consecutive working days per occurrence. Administrative leave in excess of ten consecutive working days per occurrence may be granted by the agency head.

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- (3) Administrative leave taken must be documented in the employee's leave record.

R477-7-8. Jury Leave.

- (1) An employee is entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:
 - (a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or
 - (b) serve as a witness in a grievance hearing as provided in Section 67-19-31 and Title 67, Chapter 19a; or
 - (c) serve on a jury.
- (2) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.
- (3) An employee choosing to use paid leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of 24 hours bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

- (1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:
 - (a) spouse;
 - (b) parents;
 - (c) siblings;
 - (d) children;
 - (e) all levels of grandparents; or
 - (f) all levels of grandchildren.

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R477-7-10. Military Leave.

One day of military leave is the equivalent to the employee's normal workday but not to exceed eight hours.

- (1) An employee who is a member of the National Guard or Military Reserves is entitled to paid military leave not to exceed 15 days per calendar year. An employee shall be on official military orders and may not claim salary for nonworking days spent in military training or for traditional weekend training.
- (2) After the first 15 days, officers and employees of the state shall be granted military leave without pay for the period of official military orders, including travel time, Section 39-3-1.
 - (a) An employee may use accrued leave while on official military orders.
 - (i) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.
- (3) An employee on military leave is eligible for any service awards or non-performance administrative leave he would otherwise be eligible to receive.
- (4) An employee shall give notice of official military orders as soon as possible.
- (5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.
 - (a) If the period of service was for less than 91 days, the employee shall be placed:
 - (i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or
 - (ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.
 - (b) If the period of service was for more than 90 days, the employee shall be placed:
 - (i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or
 - (ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

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- (c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.
 - (d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.
 - (e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual. An employee entering military leave may elect to have payment for annual leave deferred.
- (6) In order to be reemployed, an employee shall present evidence of military service, and:
- (a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;
 - (b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or
 - (c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

- (1) An employee may be granted leave from work with pay for an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:
- (a) a copy of a written request for the employee's services from an official of the American Red Cross;
 - (b) the anticipated duration of the absence;
 - (c) the type of service the employee is to provide for the American Red Cross; and
 - (d) the nature and location of the disaster where the employee's services will be provided.

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R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

- (1) An employee who donates bone marrow shall be granted up to seven days of paid leave.
- (2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

- (1) An employee shall apply in writing to agency management for approval of a leave of absence without pay. Approval may be granted for continuous leave for up to 12 months from the last day worked.
 - (a) The employee shall be entitled to previously accrued annual and sick leave.
 - (b) If unable to return to work within the time period granted, the employee shall be separated from state employment unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.
- (2) Nonmedical Reasons
 - (a) Leave without pay may be granted only when there is an expectation that the employee will return to work. This section does not apply for military leave.
 - (b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist. An employee may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.
 - (c) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.
 - (d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.
- (3) Medical Reasons
 - (a) An employee who is ineligible for FMLA, Workers Compensation, or Long Term Disability may be granted continuous, reduced or intermittent leave without pay for medical reasons.

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- (b) Medical leave without pay may be granted for no more than 12 months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.
- (c) An employee who is granted this leave shall provide a monthly status update to the employee's supervisor.

R477-7-14. Furlough.

- (1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:
 - (a) An employee shall accrue annual and sick leave.
 - (b) Full payment of all fringe benefits shall continue at the agency's expense.
 - (c) An employee shall return to the current position.
 - (d) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

- (1) An employee is entitled to 12 weeks of family and medical leave each calendar year for any of the following reasons:
 - (a) birth of a child;
 - (b) adoption of a child;
 - (c) placement of a foster child;
 - (d) a serious health condition of the employee; or
 - (e) care of a spouse, dependent child, or parent with a serious medical condition.
- (2) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave.
- (3) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

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- (4) To be eligible for family and medical leave, the employee must:
 - (a) be employed by the state for at least 12 months;
 - (b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.
- (5) When an employee chooses to use FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:
 - (a) thirty days in advance for foreseeable needs; or
 - (b) as soon as possible in emergencies.
- (6) An employee may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.
 - (a) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.
 - (b) An employee who takes family and medical leave in a leave without pay status must comply with Section R477-7-13.
- (7) Any period of leave without pay for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.
- (8) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.
- (9) An employee shall be eligible to return to work under Section R477-7-13.
 - (a) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.
 - (b) Exceptions to this provision include:
 - (i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

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- (ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.
- (10) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.
- (11) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of Subsection R477-2-5(7).

R477-7-16. Workers Compensation Leave.

- (1) An employee may use accrued leave benefits to supplement the workers compensation benefit.
 - (a) The combination of leave benefit and workers compensation benefit shall not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.
 - (b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:
 - (i) the employee is declared medically stable by licensed medical authority;
 - (ii) the workers compensation fund terminates the benefit;
 - (iii) the employee has been absent from work for one year;
 - (iv) the employee refuses to accept appropriate employment offered by the state; or
 - (v) the employee receives Long Term Disability or Social Security Disability benefits.
 - (c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.
- (2) An employee will continue to accrue state paid benefits and leave benefits while receiving a workers compensation time loss benefit for up to one year.
- (3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

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- (4) If the employee is able to return to work within one year of the last day worked, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.
- (5) If the employee is unable to return to work within 12 months, the employee shall be separated from state employment unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.
- (6) An employee who files a fraudulent workers compensation claim shall be disciplined according to the provisions of Rule R477-11.

R477-7-17. Long Term Disability Leave.

- (1) An employee who is determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.
 - (a) The medical leave begins on the last day the employee worked. LTD requires a three month waiting period before benefit payments begin. During this period, an employee may use available sick and converted sick leave. When those balances are exhausted, an employee may use other leave balances available.
 - (b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program.

Upon approval of the LTD claim:

- (i) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.
- (ii) The employee shall be paid for remaining balances of annual leave, compensatory hours and excess hours in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. If the employee returns to work prior to one year after the last day worked, the employee has the option of buying back annual leave at the current hourly rate.

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- (iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.
 - (iv) An employee who retires from state government directly from LTD may be eligible for health and life insurance as provided in Subsection 67-19-14(2)(b)(ii).
 - (v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance as provided in Subsection 67-19-14(2)(c)(i).
- (2) An employee shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.
- (3) Conditions for return from leave without pay shall include:
 - (a) If an employee provides an administratively acceptable medical release allowing him to return to work within one year of the last day worked, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.
 - (b) If an employee is unable to return to work within one year after the last day worked, the employee shall be separated from state employment unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.
- (4) An employee who files a fraudulent long term disability claim shall be disciplined according to the provisions of Rule R477-11.

R477-7-18. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program as follows:

- (1) Only annual leave, excess hours, compensatory time earned by an FLSA nonexempt employee, and converted sick leave hours may be donated to a leave bank.
- (2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

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- (3) An employee may not receive donated leave until all individually accrued leave is used.
- (4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

R477-7-19. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with Subsection R477-2-3(1).

KEY: holidays, leave benefits, vacations

Date of Enactment or Last Substantive Amendment: July 1, 2007

Authorizing, and Implemented or Interpreted Law: 34-43-103; 49-9-203; 63-13-2; 67-19-6; 67-19-12.9; 67-19-14; 67-19-14.2; 67-19-14.4

R477-8. Working Conditions.

R477-8-1. Work Period.

- (1) Tasks shall be assigned and wages paid in return for work completed. During the state's standard work week, each employee is responsible for fulfilling the essential functions of his job.
 - (a) The state's standard work week begins Saturday and ends the following Friday.
 - (b) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public, consistent with overtime provisions of Section R477-8-6.
 - (c) An employee may negotiate for flexible starting and quitting times with the immediate supervisor as long as scheduling is consistent with overtime provisions of the rules Section R477-8-6.
 - (d) Agencies may implement alternative work schedules approved by the Director.
 - (e) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.
 - (f) An employee must work in increments of 15 minutes or more to receive salary for hours worked and overtime hours worked. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

R477-8-2. Bus Passes.

Agencies may participate in the purchase of bus passes for employees.

R477-8-3. Telecommuting.

- (1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:
 - (a) establish a written policy governing telecommuting;
 - (b) enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met; and

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- (c) not allow telecommuting employees to violate overtime rules.

R477-8-4. Lunch and Break Periods.

- (1) Each full-time work day shall include a minimum of 30 minutes noncompensated lunch period. This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.
- (2) An employee may take a 15 minute compensated break period for every four hours worked.
- (3) Lunch and break periods shall not be adjusted or accumulated to accommodate a shorter work day or longer lunch period. Any exceptions must be approved in writing by the Executive Director, DHRM.

R477-8-5. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

- (1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:
 - (a) prior supervisory approval for all overtime worked;
 - (b) recordkeeping guidelines for all overtime worked;
 - (c) verification that there are sufficient funds in the budget to compensate for overtime worked.
- (2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.
 - (a) An employee may appeal the FLSA designation to the agency human resource office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31, 67-19a-301 and Title 63, Chapter 46b shall not apply for FLSA appeals purposes.
- (3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accrual. Hours worked over two or more weeks shall not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

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- (a) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.
 - (b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.
- (4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.
- (a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by division and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.
 - (b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.
 - (c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:
 - (i) at the end of the employee's established overtime year;
 - (ii) when an employee transfers to another agency; or
 - (iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.
 - (d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

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- (e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime shall not be compensated with actual payment. Schedule AB employees shall not be compensated for compensatory time except with time off.
- (5) Law enforcement, correctional and fire protection employees
 - (a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:
 - (i) be a uniformed or plainclothes sworn officer;
 - (ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;
 - (iii) have the power to arrest;
 - (iv) be POST certified or scheduled for POST training; and
 - (v) perform over 80 percent law enforcement duties.
 - (b) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.
 - (i) 171 hours in a work period of 28 consecutive days; or
 - (ii) 86 hours in a work period of 14 consecutive days.
 - (c) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.
 - (i) 212 hours in a work period of 28 consecutive days; or
 - (ii) 106 hours in a work period of 14 consecutive days.
 - (d) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:
 - (i) the Fair Labor Standards Act, Section 207(k);
 - (ii) 29 CFR 553.230;
 - (iii) the state's payroll period;

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- (iv) the approval of the Executive Director, DHRM.

(6) Compensatory Time

- (a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.
- (b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

- (a) An FLSA nonexempt employee must complete and sign a state approved biweekly time record that accurately reflects the hours actually worked including:
 - (i) approved and unapproved overtime;
 - (ii) on-call time;
 - (iii) stand-by time;
 - iv) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours;
 - (v) and approved leave time.
- (b) An employee who fails to accurately record time shall be disciplined.
- (c) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.
- (d) An FLSA exempt employee who works more than 80 hours in a work period must record the total hours worked and the compensatory time used on a biweekly time record. All hours must be recorded in order to claim overtime. Completion of the time record is at agency discretion when no overtime is worked during the work period.
- (e) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record shall be disciplined.

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- (f) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, or designee, of the Department of Human Resource Management.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

- (a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.
- (b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:
 - (i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;
 - (ii) the employee is completely relieved from duty and allowed to leave the job;
 - (iii) the employee is relieved until a definite specified time;
 - (iv) the relief period is long enough for the employee to use as the employee sees fit.
- (c) On-call time: An employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call.
 - (i) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for call to duty.
 - (ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a beeper or cell phone shall not constitute on-call time without a specific directive from a supervisor.
 - (iii) The employee shall record the hours spent in on-call status on his time sheet in order to be paid.
- (d) Stand-by time: An employee restricted to stand-by at a specified location ready for work must be paid full-time or overtime, as appropriate. An employee must be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

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- (e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.
- (9) Commuting and Travel Time for FLSA exempt and nonexempt employees:
 - (a) Normal commuting time from home to work and back shall not count towards hours worked.
 - (b) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.
 - (c) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.
 - (d) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.
 - (e) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.
- (10) Excess Hours for FLSA exempt and nonexempt employees: An employee may use excess hours the same way as annual leave.
 - (a) Agency management shall approve excess hours before the work is performed.
 - (b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.
 - (c) An employee may not accumulate more than 80 excess hours.
 - (d) Agency management may pay out excess hours under one of the following:
 - (i) paid off automatically in the same pay period accrued;
 - (ii) paid off at any time during the year as determined appropriate by a state agency or division;
 - (iii) all hours accrued above the limit set by DHRM; or
 - (iv) upon request of the employee and approval by the agency head.

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R477-8-6. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

- (1) An employee may work in up to four different positions in state government.
- (2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.
- (3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.
- (4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.
- (5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.
- (6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.
- (7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.
- (8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.
- (9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions outlined in Subsection R477-9-2(1).

R477-8-7. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8 Working Conditions

R477-8-8. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

- (1) return to work from injury or illness;
- (2) when management determines that there is a direct threat to the health or safety of self or others;
- (3) in conjunction with corrective action, performance or conduct issues, or discipline;
- (4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-9. Temporary Transitional Assignment.

Temporary transitional assignments may be part of any of the following:

- (1) when an employee is unable to perform essential job functions due to temporary disability or medical restrictions;
- (2) when management determines that there is a direct threat to the health or safety of self or others;
- (3) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;
- (4) where there is a bona fide occupational qualification for retention in a position;
- (5) as a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-10. Change in Work Location.

- (1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond his current one way commute, unless:
 - (a) the change in work location is communicated to the employee at employment; and
 - (b) the agency shall either pay to move the employee consistent with Section R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-03.03, or reimburse commuting expenses up to the cost of a move.

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R477-8-11. Agency Policies and Exemptions.

- (1) Each agency shall write its own policies for work schedules, overtime, leave, and other working conditions consistent with these rules.
- (2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment

Date of Enactment or Last Substantive Amendment: July 1, 2007

Notice of Continuation: June 11, 2002

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103

R477-9. Employee Conduct.

R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

- (1) Employees shall apply themselves to and shall fulfill their assigned duties during the full-time for which they are compensated.
 - (a) An employee shall:
 - (i) comply with the standards established in the individual performance plans;
 - (ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;
 - (iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;
 - (iv) inform the supervisor of any unclear instructions or procedures.
- (2) An employee shall make prudent and frugal use of state funds, equipment, buildings, and supplies.
- (3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or nonprescribed controlled substances shall be subject to corrective action or discipline in accordance with Section R477-10-2, Rule R477-11 and R477-14.
 - (a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Subsection 63-30-36(c)(ii) of the Utah Governmental Immunity Act.
- (4) An employee shall not drive a state vehicle, or any other vehicle, on state time while under the influence of alcohol or controlled substances.
 - (a) An employee who violates this rule shall be subject to corrective action or discipline pursuant to Section R477-10-2, Rule R477-11 and R477-14.
 - (b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63-30-36(3)(c)(i) of the Utah Governmental Immunity Act.

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- (5) An employee shall provide the agency with a current mailing address.
 - (a) The employee shall notify the agency in writing of any change in address.
 - (b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

R477-9-2. Outside Employment.

- (1) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:
 - (a) Outside employment must not interfere with an employee's efficient performance in his state position.
 - (b) Outside employment must not conflict with the interests of the agency or the State of Utah.
 - (c) Outside employment must not give reason for criticism or suspicion of conflicting interests or duties.
 - (d) An employee shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16, Employee Ethics Act.
 - (e) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.
 - (i) An employee may grieve this decision.
 - (ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

- (1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:
 - (a) Outside activities must not interfere with the employee's efficient performance in his state position.
 - (b) Outside activities must not conflict with the interests of the agency or the State of Utah.

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- (c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.
- (2) An employee shall not use his state position or any influence, power, authority or confidential information received in that position, or state time, equipment, property or supplies for private gain.
- (3) An employee shall not receive outside compensation for performing state duties, except for the following:
 - (a) Gifts or compensation defined in the Governor's Executive Order on Ethics dated February 14, 2007; or
 - (b) honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule.
- (4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

A state career service employee may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The employee shall comply with the provisions of the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508. The following rules apply to a career service employee in any salary range and position.

- (1) Any state career service employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. An employee shall not receive annual leave while serving in a political office.
- (2) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.
- (3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.
- (4) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.

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- (5) This rule shall not apply to an employee who is restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. Agency management shall dismiss any employee whose employment is found to be in violation of the provisions of this law by the Merit Systems Protection Board.

R477-9-5. Employee Indebtedness to the State.

- (1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.
 - (a) The following three conditions must be met before withholding of salary may occur:
 - (i) The debt must be a legitimately owed amount which can be validated through physical documentation or other evidence.
 - (ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.
 - (iii) An employee must be notified of this rule which allows the state to withhold salary.
 - (b) An employee separating from state service will have salary withheld from the last paycheck.
 - (c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.
 - (d) The state may withhold an employee's salary to satisfy the following specific obligations:
 - (i) travel advances where travel and reimbursement for the travel has already occurred;
 - (ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;
 - (iii) evidence that the employee negligently caused loss or damage of state property;
 - (iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

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- (v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;
 - (vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;
 - (vii) excessive reimbursement of funds from flexible reimbursement accounts;
 - (viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.
- (2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-6. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

- (1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.
- (2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

R477-9-7. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with Subsection R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management

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R477-10. Employee Development.

R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

- (1) An acceptable performance management system shall satisfy the following criteria:
 - (a) Performance standards and expectations for each employee shall be specifically written in a performance plan by August 30 of each fiscal year.
 - (b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.
 - (c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.
 - (d) Each employee shall have the right to include written comment with his performance evaluation.
 - (e) Agency management shall select a performance management rating system or a combination of systems by August 31 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM	# RATING	POINTS
1	Pass	2
	Fail	0
2	Exceptional	3
	Successful	2
	Unsuccessful	0
3	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Unsuccessful	0
4	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Marginal	1
	Unsuccessful	0

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- (2) Each state employee shall receive a performance evaluation effective on or before the beginning of the first pay period of each fiscal year.
 - (a) A probationary employee shall receive a performance evaluation at the end of the probationary period and again prior to the beginning of the first pay period of the fiscal year.
- (3) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.
 - (a) The evaluation form shall include a space for the employee's comments. The employee may comment in writing, either in the space provided or on a separate attachment.

R477-10-2. Corrective Action.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, agency management may take appropriate, and documented corrective action in accordance with the following rules:

- (1) The supervisor shall discuss the substandard performance with the employee and determine appropriate corrective action. If a formal corrective action plan is developed or a written warning issued, the employee shall sign the plan or the warning to certify that it has been reviewed. Refusal to sign the corrective action plan or warning shall constitute insubordination subject to discipline.
- (2) An employee shall have the right to submit written comment to accompany the corrective action plan.
- (3) Corrective action plans shall identify or provide for:
 - (a) a designated period of time for improvement;
 - (b) an opportunity for remediation;
 - (c) performance expectations;
 - (d) closer supervision to include regular feedback of the employee's progress;
 - (e) notice of disciplinary action for failure to improve; and,
 - (f) written performance evaluation at the conclusion of the corrective action plan.

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- (4) Corrective action plans may also identify or provide for the following based on the nature of the performance issue:
 - (a) training;
 - (b) reassignment;
 - (c) use of appropriate leave;
- (5) Following successful completion of corrective action, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

R477-10-3. Employee Development and Training.

Agency management may establish a program for training and staff development consistent with these rules.

- (1) All agency sponsored training shall be agency specific or designed for highly specialized or technical jobs and tasks.
- (2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.
- (3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.
- (4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.
- (5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

R477-10-4. Liability Prevention Training.

Agencies shall provide liability prevention training to their employees. The curriculum shall be approved by DHRM. Topics shall include but not be limited to: new employee orientation, prevention of unlawful harassment, and supervisor training on prevention of workplace violence.

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R477-10-5. Education Assistance.

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

- (1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:
 - (a) The educational program will provide a benefit to the state.
 - (b) The employee shall successfully complete the required course work or the educational requirements of a program.
 - (c) The employee shall agree to repay any assistance received if the employee resigns from state employment within 12 months of completing educational work.
 - (d) Education assistance shall not exceed \$5,250 per employee in any one calendar year unless approved in advance by the agency head.
 - (e) The employee shall disclose all scholarships, subsidies and grant monies provided to the employee for the educational program.
 - (i) Except for funding that must be repaid by the employee, the amount reimbursed by the State may not include funding received from sources in Subsection R477-10-5(1)(e).
- (2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.
- (3) Agencies may offer educational assistance to law enforcement and correctional officers consistent with section 67-19-12.2 and with these criteria:
 - (a) The program shall comply with Subsections R477-10-5(1) and R477-10-5(2).
 - (b) The program shall be published and available to all qualified employees. To qualify:
 - (i) The employee's job duties shall satisfy the conditions of subsection 67-19-12.2(1).
 - (ii) The employee shall have completed probation.
 - (iii) The employee shall maintain a grade point average of at least 3.0 or equivalent from an accredited college or university.

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- (c) The program may provide additional compensation for an employee who completes a higher degree on or after April 30, 2001, in a subject area directly related to the employee's duties. If this policy is adopted, then:
 - (i) Two steps shall be given for an associate's degree.
 - (ii) Two steps shall be given for a bachelor's degree.
 - (iii) Two steps shall be given for a master's degree.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs

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Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12.4

R477-11. Discipline.

R477-11-1. Disciplinary Action.

- (1) Agency management may discipline any employee for any of the following causes or reasons:
 - (a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;
 - (b) work performance that is inefficient or incompetent;
 - (c) failure to maintain skills and adequate performance levels;
 - (d) insubordination or disloyalty to the orders of a superior;
 - (e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;
 - (f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;
 - (g) no longer meets the requirements of the position.
- (2) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):
 - (a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.
 - (b) The employee's reply must be received within five working days in order to have the agency representative consider the reply before discipline is imposed.
 - (c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.
- (3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following:

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- (a) written reprimand;
- (b) suspension without pay up to 30 calendar days per incident requiring discipline;
- (c) demotion of any employee through one of the following methods:
 - (i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage.
 - (ii) A demotion within the employee's current salary range may be accomplished by lowering the employee's current actual wage, as determined by the agency head or designee.
- (d) dismissal.

An agency head shall dismiss or demote a career service employee only in accordance with the provisions of Subsection 67-19-18(5) and Section R477-11-2.

- (4) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by subsection 67-19-18(4), pending an investigation and determination of facts:
 - (a) paid administrative leave; or
 - (b) temporary reassignment to another position or work location at the same current actual wage.
- (5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.
- (6) Disciplinary actions are subject to the grievance and appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause as explained under Sections R477-10-2 and R477-11-1, and through the process outlined in this rule.

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- (1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee without right of appeal. Such dismissal or demotion may be for any reason or for no reason.
- (2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:
 - (a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.
 - (b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency head or designee to consider the reply before discipline is imposed.
 - (c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the department head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.
 - (i) At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.
 - (ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Title 63, Chapter 3, the Governmental Access and Records Management Act.
 - (d) Following the hearing, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.
 - (e) The employee shall be notified in writing of the agency head's decision. Specific reasons shall be provided if the decision is a demotion or dismissal.
- (3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

- (1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

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- (a) consistent application of rules and standards;
- (b) prior knowledge of rules and standards;
- (c) the severity of the infraction;
- (d) the repeated nature of violations;
- (e) prior disciplinary/corrective actions;
- (f) previous oral warnings, written warnings and discussions;
- (g) the employee's past work record;
- (h) the effect on agency operations;
- (i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings

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R477-12. Separations.

R477-12-1. Resignation.

A career service employee may resign or retire by giving written or verbal notice to the immediate supervisor or an appropriate representative of management in the work unit.

- (1) Agency management may accept an employee's notice of resignation or retirement without prejudice when received at least ten working days before its effective date.
- (2) After submitting a notice of resignation or retirement, an employee may withdraw it on the next working day by notifying the immediate supervisor or an appropriate representative of management in the work unit.
 - (a) If the withdrawal notice is verbal, the employee shall submit a written notification within 24 hours of the verbal notice.
 - (b) After the close of the next working day following submission, withdrawal of a resignation or retirement may occur only with the consent of agency management.

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned his position and to have resigned from the employing agency.

- (1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.
 - (a) The employee shall have the right to appeal to the agency head within five working days of receipt or delivery of the notice of abandonment to the last known address.
 - (b) If the separation is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force shall be required when there are inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by DHRM business practices, standards and the following rules:

R477-12 Separations

- (1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed and approved by the Executive Director, DHRM, or designee. The following items shall be considered in developing the work force adjustment plan:
 - (a) the categories of work to be eliminated, including positions impacted through bumping, as determined by management;
 - (b) a decision by agency management allowing or disallowing bumping;
 - (c) specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, reassignment, relocation, and movement to vacant positions for which the employee qualifies;
 - (d) a list of all affected employees showing the retention points for each employee.
- (2) Eligibility for RIF.
 - (a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.
 - (b) An employee covered by USERRA and in a leave without pay status must be identified, assigned retention points, and notified of the RIF of the previous position in the same manner as a career service employee.
- (3) Retention points shall be calculated for all affected employees within a category of work as follows:
 - (a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.
 - (i) For part-time work, length of service shall be determined in proportion to hours actually worked.
 - (ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.
 - (iii) In the event of ties in retention points, the amount of time employed in the affected agency or department serves as the tie breaker.
 - (b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

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- (c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.
 - (d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.
 - (e) An employee within a category of work, including employees covered under USERRA in a leave without pay status, shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in Subsection R477-10-1(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of all ratings received as of that time.
 - (f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.
 - (g) Retention points shall be calculated for an employee covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.
- (4) The order of separation shall be:
- (a) temporary employees;
 - (b) probationary employees;
 - (c) career service employees with the lowest retention points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.
- (5) An employee, including one covered under USERRA in a leave without pay status, who is separated due to a reduction in force shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.
- (6) Appeals.
- (a) An employee notified of separation due to a reduction in force may appeal to the agency head for an administrative review by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

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- (b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.
- (7) Reappointment of RIF'd individual.
 - (a) A RIF'd individual is eligible for reappointment into a half time or greater career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. Section R477-4-4 applies for selection of individuals from the reappointment register.
 - (i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF'd individual meets the job requirements for position vacancies.
 - (ii) A RIF'd individual shall remain on the state reappointment register for 12 months from the date of separation, unless reappointed sooner.
 - (b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each agency's budgeted FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.
 - (c) When determining comparable salary ranges in cases of RIF eligibility, a comparison of the previous career service salary range to the current career service salary range maximum step is required. A RIF'd individual shall have RIF rights to any vacant position for which he qualifies. The basis for comparison shall be:
 - (i) The current salary range of a vacant position if it is equal to or lesser than the individual's previous salary range, or;
 - (ii) If the maximum step of the position previously held by the RIF'd individual has moved upward, the new range shall be used.
 - (d) A RIF'd individual who is reappointed to a career service position shall not be required to serve a probationary period. The RIF'd individual shall enjoy all the rights and privileges of a regular career service employee.
 - (e) At agency discretion, an individual reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

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- (8) Appeal rights of RIF'd individual. An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.
- (9) A career service employee in an exempt position. Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause as provided for by these rules, shall be placed on the reappointment register.
 - (a) The Executive Director, DHRM, shall maintain a reappointment register for this purpose. An individual on this register shall:
 - (i) be appointed to any half time or greater career service position for which the individual qualifies in a salary range comparable to the individual's last position in the career service, provided an opening exists; or
 - (ii) be appointed to any lesser career service position for which the individual qualifies, pending the opening of a position at the last career service salary range held.
 - (b) The Executive Director, DHRM, shall make the final determination on whether an eligible individual meets the job requirements for position vacancies.
 - (c) The individual shall declare a desire to remain on the reappointment register upon inquiry by DHRM.
 - (d) Prior to termination and in lieu of placement on the reappointment register, management may place an employee in a vacant career service position consistent with Subsection R477-12-3(7)(c) for which he qualifies. A memorandum of understanding waiving all appeal rights concerning the reassignment shall be signed by the employee.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, employees' rights, grievances, retirement

Date of Enactment or Last Substantive Amendment: July 1, 2007

Notice of Continuation: June 11, 2002

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-17; 67-19-18

R477-13. Volunteer Programs.

R477-13-1. Volunteer Programs.

Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state. A volunteer is considered a government employee for purposes of workers compensation, operation of motor vehicles or equipment, and liability protection and indemnification.

- (1) Agency management may establish a program for people to volunteer their services to the agency consistent with the following rules. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with Subsection R477-2-2(1).
- (2) When implementing a volunteer program, agency management shall:
 - (a) orient the volunteer to the conditions of state service and their specific job assignments;
 - (b) provide adequate supervision of the volunteer staff;
 - (c) designate the type of work for which volunteer services may be allowed to supplement paid staff;
 - (d) document the approval of, numbers of, and hours worked by its volunteers, based on standards established DHRM;
 - (e) collect data on the number of volunteers and the number of volunteer hours; and
 - (f) evaluate and assign volunteers in accordance with standards set by DHRM.

R477-13-2. Volunteer Experience Credit.

- (1) Agency management shall apply approved and documented related volunteer experience to satisfy the job requirements for career service positions.
 - (a) Volunteer experience shall not substitute for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.
 - (b) Court ordered community service experience will not be considered volunteer work for purposes of meeting job requirements.
- (2) Participants in state or other volunteer programs shall receive credit for volunteer experience for the purposes of career service employment when:

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- (a) The volunteer experience is related to the identified duties and responsibilities of the designated career service position as determined by agency management.
- (b) The volunteer experience is documented in accordance with standards established by DHRM.
- (3) Credit for documented and job related volunteer experience shall be given in the same manner as similar paid employment.

KEY: personnel management, administrative rules, rules and procedures, definitions

Date of Enactment or Last Substantive Amendment: July 5, 2000

Notice of Continuation: June 11, 2002

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

R477-14. Substance Abuse and Drug-Free Workplace.

R477-14-1. Rules Governing a Drug-Free Workplace.

- (1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:
 - (a) Provide a safe and productive work environment that is free from the effect of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.
 - (b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.
 - (c) Assure the protection and safety of employees and the public.
- (2) State employees may not unlawfully manufacture, dispense, possess, distribute or use any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty except where legally permissible.
 - (a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.
- (3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.
- (4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.
- (5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.
- (6) Employees in non safety sensitive positions are subject to one or more of the following drug or alcohol tests:
 - (a) reasonable suspicion;
 - (b) critical incident;
 - (c) post accident;
 - (d) return to duty;

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- (e) follow up.
- (7) For employees in non safety sensitive positions, the State of Utah will use the same cut off levels for positive drug tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures.
- (8) For employees in non safety sensitive positions, the State of Utah will use a blood alcohol concentration level of .08 as the cut off for a positive alcohol test.
- (9) Employees who hold safety sensitive positions, are final candidates for, are transferred to, or are assigned the duties of a safety sensitive position, and final applicants for safety sensitive positions are subject to one or more of the following drug or alcohol tests:
 - (a) reasonable suspicion;
 - (b) critical incident;
 - (c) post accident;
 - (d) return to duty;
 - (e) follow up;
 - (f) preemployment;
 - (g) random.
- (10) For employees in safety sensitive positions, the State of Utah will use the same cutoff levels for positive drug and alcohol tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures, 49 CFR 382.107 (2002), Definitions, 49 CFR 382.201 (2002), Alcohol Concentration and 49 CFR 382.505 (2002), Other Alcohol Related Conduct.
- (11) Employees in safety sensitive positions, as approved by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in safety sensitive positions shall be conducted at the discretion of the employing agency.
- (12) Employees in safety sensitive positions whose confirmation test for alcohol results are .02 or greater, when tested before, during, or immediately after performing safety sensitive functions, must be removed from performing safety sensitive duties for 8 hours, or until another test is administered and the result is less than .02.

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- (13) Employees in safety sensitive positions whose confirmation test for alcohol results are .04 or greater when tested before, during or after performing safety sensitive duties, may be subject to corrective action or discipline.
- (14) Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual.
- (15) Management may take disciplinary action if:
 - (a) there is a positive confirmation test for controlled substances;
 - (b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;
 - (c) management determines an employee is unable to perform his assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.
- (16) The agency's human resource office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

R477-14-2. Management Action.

- (1) Pursuant to Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.
- (2) Management may take disciplinary action which may include dismissal.
- (3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.
- (4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.
- (5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:
 - (a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00;
 - (b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

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- (6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be required to participate, at his expense, in a rehabilitation program, as provided for in Subsection 67-19-38.(3). If this is required, the following shall apply:
 - (a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.
 - (b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.
 - (c) All communication shall be classified as private in accordance with Title 63, Chapter 2.
 - (d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.
 - (e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range.
- (7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.
- (8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.
- (9) An employee who is convicted for a violation occurring in the workplace, under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.
 - (a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:
 - (i) the judicial system;
 - (ii) other sources;
 - (iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

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R477-14-3. Rule Distribution.

The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

Date of Enactment or Last Substantive Amendment: July 1, 2006

Notice of Continuation: December 6, 2006

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 67-19-34; 63-19-37; 67-19-38

R477 Unlawful Harassment

R477-15. Unlawful Harassment Policy and Procedure.

R477-15-1. Purpose.

It is the State of Utah's policy to:

- (1) provide all employees a working environment that is free from unlawful harassment based on race, religion, national origin, color, sex, age, disability, or protected activity under the anti-discrimination statute; and
- (2) comply with state and federal laws regarding discrimination based on unlawful harassment.

R477-15-2. Policy.

- (1) Unlawful harassment means discriminatory treatment based on race, religion, national origin, color, sex, age, protected activity or disability. Discrimination based on unlawful harassment will not be tolerated. Violators shall be subject to corrective action or disciplined and may be referred for criminal prosecution. Discipline may include termination of employment.
- (2) Unlawful harassment includes the following subtypes:
 - (a) behavior or conduct in violation of Subsection R477-15-2(1) that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;
 - (b) behavior or conduct in violation of Subsection R477-15-2(1) that results in a tangible employment action being taken against the harassed employee.
- (3) The imposition of corrective action and discipline is governed by Section R477-10-2 and Rule R477-11.
- (4) An employee shall be subject to corrective action or discipline for unlawful harassment towards another employee, even if that harassment occurs outside of scheduled work time or work location, provided that the harassment meets the requirements of Subsection R477-15-2(2).
- (5) Individuals affected by alleged unlawful harassment may, but shall not be required to, confront the accused harasser before filing a complaint.
- (6) Once a complaint has been filed, the accused shall not communicate with the complainant regarding allegations of harassment.

R477-15-3. Retaliation.

- (1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any

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manner in an investigation, proceeding or hearing under this policy, or is otherwise engaged in protected activity.

- (2) Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to corrective action or disciplinary action. Prohibited actions include:
 - (a) open hostility to complainant, participant or others involved;
 - (b) exclusion or ostracism of the complainant, participant or others;
 - (c) creation of or the continued existence of a hostile work environment;
 - (d) discriminatory remarks about the complainant, participant or others;
 - (e) special attention to or assignment of the complainant, participant or others to demeaning duties not otherwise performed;
 - (f) tokenism or patronizing behavior;
 - (g) discriminatory treatment;
 - (h) subtle harassment; or
 - (i) unreasonable supervisory imposed time restrictions on employees in preparing complaints or compiling evidence of unlawful harassment activities or behaviors.

R477-15-4. Complaint Procedure.

Individuals affected by unlawful harassment may file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation.

- (1) Individuals who feel they are being subjected to unlawful harassment should do the following:
 - (a) document the occurrence;
 - (b) continue to report to work; and
 - (c) identify a witness, if applicable.
- (2) An employee may file an oral or written complaint of unlawful harassment with their immediate supervisor, any other supervisor within their direct chain of command, the agency human resource office or the Department of Human Resource Management.

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- (3) Any complaint of unlawful harassment shall be acted upon following receipt of the complaint.
 - (a) Complaints may be submitted by any individual, witness, volunteer or other employee.
 - (b) Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines.
 - (c) Any supervisor who has knowledge of unlawful harassment shall take immediate, appropriate action and document the action.
- (4) If an immediate investigation by the agency is not warranted, a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.

R477-15-5. Investigative Procedure.

- (1) The investigative procedures established by agencies shall allow the complainant to make specific requests relating to the investigation process and about the person or persons who will conduct the investigation. The agency shall attempt to comply with these requests, but may take whatever action necessary and appropriate to resolve the complaint.
- (2) Preliminary reviews and investigations must be conducted in accordance with procedures issued by the Department of Human Resource Management.
- (3) Results of Investigation
 - (a) If the investigation reveals that disciplinary action is warranted, the agency head shall take appropriate action as provided in Rule R477-11.
 - (b) If an investigation reveals evidence of criminal conduct in unlawful harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the Attorney General's Office or County or District Attorney as appropriate.
 - (c) If an investigation of unlawful harassment reveals that the accusations are unfounded, the findings shall be documented, the investigation terminated, and appropriate parties notified.
 - (d) Investigations shall be conducted by qualified individuals based on DHRM standards.

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R477-15-6. Records.

- (1) A separate protected record of all unlawful harassment complaints shall be maintained and stored in the agency's human resource office, DHRM office or in the possession of an authorized official. Removal or disposal of records in the protected file may only be done with the approval of the agency head or Executive Director, DHRM, and only after minimum timelines specified herein have been met. Records shall be kept for: a minimum of three years from the resolution of the complaint or investigative proceeding.
- (2) Supervisors shall not keep separate files related to complaints of unlawful harassment.
- (3) All information contained in the complaint file shall be classified as protected pursuant to requirements of Section 63-2-304, Government Records Access and Management Act.
- (4) Information contained in the unlawful harassment protected file shall only be released by the agency head or Executive Director, DHRM, when in compliance with the requirements of law.
- (5) Participants in any unlawful harassment proceeding shall treat all information as protected.
- (6) Final disposition of unlawful harassment cases shall be communicated to appropriate parties.

R477-15-7. Training.

- (1) Agencies shall comply with the Unlawful Harassment Prevention Training Standards set by DHRM. As a minimum, these shall contain:
 - (a) course curriculum standards;
 - (b) training presentation requirements;
 - (c) trainer qualifications; and
 - (d) training records management criteria.

KEY: administrative procedures, hostile work environment

Date of Enactment or Last Substantive Amendment: July 3, 2001

Notice of Continuation: June 11, 2002

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; Governor's Executive Order on Sexual Harassment, March 17, 1993

Appendix A

Annual, Holiday, and Sick Leave Accrual Table

The following tables provide leave and position schedule information.

Annual, holiday, and sick leave shall be accrued at a pro-rated basis in whole hour increments. Annual leave is accrued based on the total number of hours paid in the pay period. Sick leave accrues based on the number of hours paid in the pay period and accrues at a maximum of four (4) hours per pay period for all eligible employees regardless of their years of service. Holiday leave is accrued according to the number of hours paid in the pay period, excluding the holiday hours, and the number of holidays within that pay period. Example: A less than full-time employee is paid 40 hours in the pay period, excluding the holiday hours. He/she will accrue 4 hours if there is one holiday in the pay period. If two holidays fall in the pay period, that same employee will accrue 5 hours for each holiday. Holiday leave is accrued at a maximum of (8) hours per holiday.

Annual leave is accrued based on eligible years of state service.

Less than 5 years	=	4 hours accrual per pay period
At least 5 and less than 10 years	=	5 hours accrual per pay period
At least 10 and less than 20 years	=	6 hours accrual per pay period
20 years or more	=	7 hours accrual per pay period

Table A1

Annual Leave Accrual					Sick Leave Accrual	Holiday Accrual		
Total Hours Paid in the Pay Period	4 Hours	5 Hours	6 Hours	7 Hours		Hours Paid in the Pay Period (Excluding Holiday Hours)	1 Per Pay Period	2 Per Pay Period
4	0	0	0	0	0	4	0	0
8	0	1	1	1	0	8	1	1
12	1	1	1	1	1	12	1	1
16	1	1	1	1	1	16	2	2
20	1	1	2	2	1	20	2	2
24	1	2	2	2	1	24	3	3
28	1	2	2	2	1	28	3	3
32	2	2	2	3	2	32	4	4
36	2	2	3	3	2	36	4	4
40	2	3	3	4	2	40	4	5
44	2	3	3	4	2	44	5	5
48	2	3	4	4	2	48	5	6
52	3	3	4	5	3	52	6	6
56	3	4	4	5	3	56	6	7
60	3	4	5	5	3	60	7	7
64	3	4	5	6	3	64	7	8
68	3	4	5	6	3	68	8	8
72	4	5	5	6	4	72	8	8
76	4	5	6	7	4	76	8	8
80	4	5	6	7	4	80	8	8

Appendix A

Annual and Sick Leave Accrual Table for Employees Working 106 Hour Pay Periods

Table 2

Regular Hours Worked Per Pay Period	Annual Leave Accrual				Sick Leave Accrual
	5.6 Hours	7 Hours	8.4 Hours	9.8 Hours	
10	0.5	0.75	0.75	1	0.5
21	1	1.5	1.75	2	1
31	1.75	2	2.5	3	1.75
42	2.25	2.75	3.25	4	2.25
53	2.75	3.5	4.25	5	2.75
63	3.25	4.25	5	5.75	3.25
74	4	5	5.75	6.75	4
84	4.5	5.5	6.75	7.75	4.5
95	5	6.25	7.5	8.75	5
106	5.5	7	8.5	9.75	5.5
Annual Hours	145.6	182	218.4	254.8	

Appendix B

Appendix B

Position Schedules Benefit Eligibility Table

The executive director, after consultation with heads of concerned agencies, shall allocate positions to the appropriate position schedule as follows:

Schedule of Position		Holidays, Paid Leave	Health, Life, Dental	Retirement
B	Competitive Career Service	Yes	Yes	Yes
	Certificated (USOE)	Yes	Yes	Yes
AA	Governor, Elected Officials	No ²	Yes ²	Optional
	Legislature	No ²	Yes ²	Optional
AB	Department Heads (EJCC pos.)	Yes ³	Yes	Optional
AC	Employees - Office and Residence of Governor	Yes	Yes	Yes
	Staff of Lieutenant Governor	Yes	Yes	Yes
AD	Employees who report to Department Head, Commissioner or Deputy Director and have a confidential relationship with Department Head or Commissioner	Yes	Yes	Yes
AE	Unskilled ("At Will", indefinite)	Optional ⁴	Optional ⁴	Optional ⁴
AF	Part-time Medical/Professional	No	No	No
AG	Attorneys at the Attorney General's Office	Yes	Yes	Yes
AH	Patient and Inmates	No	No	No
	Deaf and Blind School - Parent Advisers	No	No	No
	Deaf and Blind School - Teachers	No ¹	Yes	Yes
AI	Employees appointed to a position vacated by an employee who has a legal right to return	Optional ⁴	Optional ⁴	Optional ⁴
AJ	Time limited, no longer than 1560 hours in any consecutive 12 month period	No	No	No
AK	Confidential Relationship - Elected Officials	Yes	Yes	Yes
AL	Time-Limited (2-yr) or Funding Limited Project	Optional ⁴	Optional ⁴	Optional ⁴
AM	Executive Professional (GOED)	Yes ²	Yes ²	Yes
AN	Employees of the Legislature	Yes ²	Yes ²	Yes
AO	Employees of the Judiciary	Yes ²	Yes ²	Yes
AP	Judges in the Judiciary	No	Yes ²	Yes
AQ	Full-time Boards and Councils	Yes ³	Yes	Yes
	Part-time Boards and Councils	No	No	No
	Higher Education	No	No	No
AR	Employees who make statewide policy	Yes	Yes	Yes
AS	Any other employee whose appointment is required by law to be exempt	Yes	Yes	Yes
AT	Employees of the Department of Technology Services	Yes	Yes	Yes

1 Separate System

2 May adopt State's benefits

3 With approved leave record

4 Benefits must be all or none

Appendix C - Grievance Procedure for Discrimination

Grievance Procedure for Discrimination

The following outlines the grievance procedure and the specific requirements of the major laws:

Age Discrimination in Employment Act of 1967

An aggrieved individual may bypass the state's grievance procedure and file directly with the Equal Employment Opportunity Commission (EEOC) or the Utah Anti-Discrimination and Labor Division (UALD).

Employees shall report the alleged discriminatory act within one of the following time periods:

- 180 days after the occurrence to EEOC, or
- 300 days after the occurrence to EEOC if the matter has been presented to UALD for proceedings under an applicable state law, or
- to the EEOC 30 days after the individual receives notice of termination of any state proceedings.

The Utah Anti-Discrimination and Labor Division of the Labor Commission is authorized by the Equal Employment Opportunity Commission to act on charges of employment discrimination. Employees must file charges within thirty days following an act of discrimination.

Section 503 of The Rehabilitation Act of 1973, as implemented by 34 CFR 361(1999)

- An aggrieved individual may bypass the state's grievance mechanism and file a complaint with the granting federal agency or the Office of Federal Contract Compliance Programs (OFCCP) within 180 days of the discriminatory event.
- If dissatisfied with the outcome of the state's grievance mechanism, an individual may also file a complaint with the OFCCP within 180 days of the discriminatory event.

Section 504 of the Rehabilitation Act of 1973.

- An aggrieved individual may bypass the state's grievance mechanism and file a complaint with the granting federal agency. If unsatisfied with the outcome of the state's grievance mechanism, an individual may also file a complaint with EEOC. A charge of discrimination should be filed within 180 days of the discriminatory event.

Appendix C

- Under the 1978 amendments to the Rehabilitation Act, the procedures for enforcing Section 504 are the same as for Title VII of the Civil Rights Act of 1964.

The Equal Pay Act of 1963 - The enforcement provisions of the Fair Labor Standards Act apply for an equal pay claim. The following rules apply:

- Sex discrimination in the payment of unequal wage rates is a continuous violation, and employees have a right to sue each payday that the discrimination persists.
- Employees are not required to exhaust any administrative procedures prior to filing an action.
- Employees alleging an equal pay claim may file directly with the Equal Employment Opportunity Commission.
- Employees do not have the right to file a court action when the Equal Employment Opportunity Commission initiates a court proceeding on the employee's behalf to either enjoin an employer or to obtain recovery of an employee's unpaid wages.
- Employees must file suit within two years from the last date of harm, unless the employer committed a willful violation of the law, in which case, they have three years.

Title VII of the Civil Rights Act of 1964

- An aggrieved individual may bypass the state's grievance mechanism and file directly with the EEOC.
- Time lines for filing a complaint are the same as for the Age Discrimination Act in R477-2-4.(1).

Americans with Disabilities Act (ADA) of 1990

- An aggrieved individual may bypass the state's grievance procedure and file directly with the EEOC or with the Utah Anti-Discrimination and Labor Division.
- Time lines for filing a complaint are the same as for the Age Discrimination Act in R477-2-4.(1).

Uniformed Service Employment and Re-employment Act of 1994 (USERRA)

State statutes of limitations shall not apply to any proceedings under USERRA.

Appendix C

An action may be initiated only by a person claiming rights or benefits, not by an employer.

The United States Department of Labor, Veterans Employment and Training Service is authorized to act on charges of employment discrimination under USERRA.

- Prior to filing an action with the Veterans Employment and Training Service, an individual shall exhaust state administrative procedures.
- If unsatisfied with the outcome of the State's grievance mechanism, an individual may file an administrative complaint.

A person who receives notice from the Veterans Employment and Training Service of an unsuccessful attempt to resolve a complaint may request that the complaint be referred to the Attorney General of the United States. The U.S. Attorney General is entitled to appear on behalf of, act as attorney for, and commence action for relief in an appropriate U.S. District Court.

An individual may commence an action for relief if that person:

- has chosen not to file a complaint through the Veterans Employment and Training Service;
- has chosen not to request that the complaint be referred to the U.S. Attorney General;
- has been refused representation by the U.S. Attorney General.

Appendix D

Employment Discrimination Protection

Employees are protected from employment discrimination under the following laws:

- The Age Discrimination in Employment Act of 1967, 29 USC 621, as implemented by 29 CFR 1625(1999). This act prohibits discrimination on the basis of age for individuals forty years and over.
- The Vocational Rehabilitation Act of 1973, 29 USC 701, as implemented by 34 CFR 361(1999). This act prohibits discrimination on the basis of disability status under any program or activity that receives federal financial assistance. Employers with federal contracts or subcontracts greater than \$10,000.00 must have an affirmative action plan to accommodate qualified individuals with disabilities for employment and advancement. All of an employer's operations and facilities must comply with Section 503 as long as any of the operations or facilities are included in federal contract work. Section 504 incorporates the employment provisions of Title I of the Americans With Disabilities Act of 1990.
- The Equal Pay Act of 1963, 29 USC 206(d), as implemented by 29 CFR 1620(1999). This act prohibits discrimination on the basis of sex.
- Title VII of the Civil Rights Act of 1964 as amended, 42 USC 2000e. This act prohibits discrimination on the basis of sex, race, color, national origin, religion, or disability.
- The Americans with Disabilities Act of 1990, 42 USC 12201. This act prohibits discrimination against qualified individuals with disabilities in recruitment, selection, benefits and all other aspects of employment.
- Uniformed Services Employment and Reemployment Act of 1994, 38 USC 4301 (USERRA). This act requires a state to reemploy eligible veterans who left state employment for military service and return to work within specified time periods defined by USERRA.

Appendix E

Employee Benefits During Leave of Absence

May 2007

Leave Type	Payroll		Health/Dental/Life*		Retirement	
	LWOP	Leave Used	LWOP	Leave Used	LWOP	Leave Used
FMLA	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Benefits will continue. See *** below.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	No service credit is given. Employee's retirement eligibility dates will be delayed by the amount of time employee is on LWOP.	If 40 hours for the pay period are used, employee will receive full credit. If less than 40 hours, employee may get service credit only for those hours. This loss of this time may result in lower retirement benefits.
Military Leave - called into active duty by state or federal government to serve during times of crisis and/or conflict.	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Benefits will continue. See *** below.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	Employee will receive full service credit for the length of the leave. Agency will be billed for past contributions plus interest owed when the employee returns.	Employee will receive full service credit for the length of the leave. The payroll check will trigger the agency's payment of contributions owed.
Military Leave - Active Duty during peace times.	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Employee receives health/dental coverage for first 30 days. After, benefits may continue if employee uses leave balances or pays 100% of the group rate premium. Life ins. continues during the leave. See **** below.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	Employee will receive full service credit for the length of the leave. Agency will be billed for past contributions plus interest owed when the employee returns.	Employee will receive full service credit for the length of the leave. The payroll check will trigger the agency's payment of contributions owed.
Worker's Compensation	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Benefits will continue. See *** below.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	Employee will receive full service credit for the length of the leave. Agency will be billed for past contributions plus interest owed when the employee returns.	Employee will receive full service credit for the length of the leave. The payroll check will trigger the agency's payment of contributions owed.
Other Approved Leave	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Employee not eligible for health/dental coverage after the first 30 days unless employee elects to continue benefits by paying 100% of the group rate premium.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	No service credit is given. Employee's retirement eligibility dates will be delayed by the amount of time employee is on LWOP.	If 40 hours for the pay period are used, employee will receive full credit. If less than 40 hours, employee may get service credit only for those hours. This loss of this time may result in lower retirement benefits.
Long-term Disability (After approval)	No payroll is processed for employees on LTD.	Use of leave is not available.	Benefits are provided through LTD. Contact PEHP for specifics.	Use of leave is not available.	Employee will receive full service credit until employee is terminated from LTD.	Use of leave is not available.

*Life refers to the \$25,000 minimum coverage

** HRE Business Practice indicates that LWOP should be entered into HRE if the leave without pay is more than one pay period so that the employment record is accurate. When LWOP is entered into HRE, employee is billed by the provider for deductions and premiums owed. These would include contributions towards a contributory retirement plan, health and dental premiums, and premiums for voluntary plans such as MetLife Home and Auto and Hyatt Legal. When payroll codes of N, NA, NF or NM are used, employee's premiums and other deductions are put into arrears then deducted in the next check(s) employee receives.

*** When LWOP is entered into HRE, both employer and employee are billed by PEHP for their respective portions of the premium. When payroll codes of N, NA, NF or NM are used, state-paid health, dental and life are paid automatically and the employee is billed by PEHP for employee portion. HRE Business Practice indicates that LWOP should be entered into HRE if the leave without pay is more than one pay period. so that the employment record is accurate.

****Allowing employee to use leave balances in order to continue insurance benefits is at the agency's discretion.

Appendix F

Public Information concerning current or former state employees

Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. Requests for information shall be in writing. The following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be given to the public upon written request where appropriate with the exception of employees whose records are private or protected:

- (a) the employee's name;
- (b) gross compensation;
- (c) salary range;
- (d) contract fees;
- (e) the nature of employer paid benefits;
- (f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;
- (g) job title;
- (h) performance plan;
- (i) education and training background as it relates to qualifying the individual for the position;
- (j) previous work experience as it relates to qualifying the individual for the position;
- (k) date of first and last employment in state government;
- (l) the final disposition of any appeal action by the Career Service Review Board;
- (m) the final disposition of any disciplinary action;
- (n) work location;
- (o) a work telephone number;
- (p) city and county of residence, excluding street address;
- (q) honors and awards as they relate to state government employment;

Appendix F

- (r) number of hours worked per pay period;
- (s) gender;
- (t) other records as approved by the State Records Committee.

Appendix G

Veterans Preference Calculation

Five percent of the total possible score shall be added to the exam score or an appropriate adjustment shall be made when examination results are other than a numeric score for any applicant claiming veterans preference who:

- (a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or
- (b) is the spouse, unremarried widow or widower of any veteran.

Ten percent of the total possible score shall be added to the exam score or an appropriate adjustment shall be made when examination results are other than a numeric score for any applicant claiming veterans preference who:

- (a) was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty; or
- (b) is the spouse, unremarried widow or widower of any disabled veteran.

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